

No. 34745

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

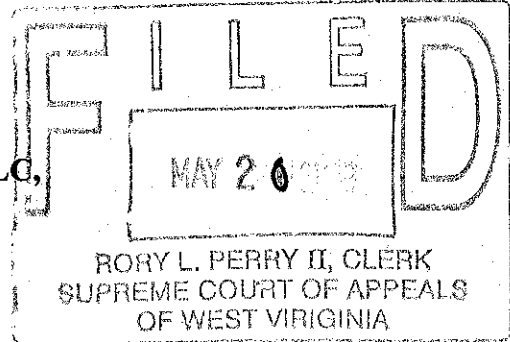
L. H. JONES EQUIPMENT COMPANY,

Plaintiff,

v.

SWENSON SPREADER, LLC,

Defendant.



**L.H. JONES EQUIPMENT COMPANY'S
RESPONSE BRIEF ON CERTIFIED QUESTION**

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| Exhibit 1 | Order of Certification to the Supreme Court of Appeals of West Virginia (Entered Feb. 6, 2009) |
| Exhibit 2 | 1989 W. Va. Acts 1304 |
| Exhibit 3 | <i>West Virginia Legislature Bill Drafting Manual</i> pp. 2, 7-8 (Rev. Jan. 2006) |

I. INTRODUCTION

Pursuant to this Court's Order entered on March 12, 2009, Plaintiff L.H. Jones Equipment Company ("L.H. Jones") submits this brief on the Question of Law to be Answered in the Order of Certification to the Supreme Court of Appeals of West Virginia in *L.H. Jones v. Swenson Spreader, LLC*, Civil Action No. 1:08CV00109 (N.D.W. Va. Feb. 6, 2009) ("Order of Certification") (attached as "Exhibit 1").

For the following three reasons, this Court should hold that the scope of the act with the short title of West Virginia Farm Equipment Dealer Contract Act (the "Act"), W. Va. Code § 47-11F-1, *et seq.*, extends to a "dealer" and "supplier" of "farm, construction, industrial or outdoor power equipment or any combination of the foregoing[.]" First, the plain language of the definition of "dealer" in the Act means any business entity "engaged in the business of selling, at retail, farm, construction, industrial or outdoor power equipment or any combination of the foregoing[.]" W. Va. Code § 47-11F-2(a)(3). Second, the Legislature's intent expressed in the title of the Act was to amend West Virginia Code Chapter 47 to add a new Article 11F, *inter alia*, "relating to the contractual relationship between farm, construction, industrial or outdoor power equipment retail dealers and their suppliers generally[.]" 1989 W. Va. Acts 1304 (copy attached as "Exhibit 2"). Third, the application of familiar rules of statutory construction also supports this result.

In addition, the title of the Act does not violate the West Virginia Constitution, Article VI, Section 30 because it is an amendatory act, the title of which states the general theme or purpose of the act and the substance of which is germane to the object expressed in the title. Although not controlling, the short title is also sufficient. *See West Virginia Legislature Bill Drafting Manual* pp. 2, 7-8 (Rev. Jan. 2006) (copy attached as "Exhibit 3").

Therefore, this Court should hold that the protections of the Act extend to a “dealer” and “supplier” of “farm, construction, industrial or outdoor power equipment or any combination of the foregoing[.]”

II. STATEMENT OF THE CASE¹

Defendant Swenson Spreader LLC (“Swenson”) is an Ohio Limited Liability Company with its principal place of business in Illinois. Swenson designs and manufactures spreaders, liquid spray de-icing systems and other equipment and products.

L.H. Jones is a West Virginia Corporation. L.H. Jones, a retailer, sells snow plows, snow plow attachments, spreaders and related parts and equipment. From at least as early as 1982, until September 10, 2007, L.H. Jones was an authorized distributor of Swenson’s products in West Virginia.

In its Complaint, L.H. Jones alleges, among other things, that since at least 1982, as an authorized dealer of Swenson equipment it had been awarded contracts with the State of West Virginia to supply it with Swenson brand ice removal equipment and replacement parts. L.H. Jones alleges that in 2005 and 2007, following a competitive bidding process, West Virginia awarded L.H. Jones two open purchase orders to supply it with two types of Swenson spreaders capable of spreading salt or other anti-skid material, which the State would use in highway and road maintenance.

¹ The Statement of the Case is taken from the district court’s Order of Certification at pp. 2-5. The district court gleaned the Statement of Facts from the parties’ pleadings and early briefing. The parties also filed a Stipulation of Facts in the district court. Because Swenson’s “Statement of Relevant Facts” in its brief in this Court and Exhibits A through D referred to therein include alleged “facts” not contained in the Order of Certification, they should be stricken. See *Preussag Int’l Steel Corp. v. March-Westin Co.*, 221 W. Va. 472, 655 S.E.2d 494, 498 n.2 (2007) (proceeding on stipulated facts in district court’s order; rejecting facts and characterizations not presented to nor ruled upon by district court).

L.H. Jones alleges that after being awarded these open purchase orders, on September 10, 2007, Swenson terminated it as an authorized distributor of Swenson products. As a result, L.H. Jones allegedly was unable to fulfill its orders from the State of West Virginia.

Swenson does not dispute that it sold spreaders and other ice removal equipment and parts to L.H. Jones, or that it terminated its relationship with L.H. Jones on September 10, 2007. It does, however, dispute that the spreaders in question in this lawsuit are the type of equipment covered by the Act, and thus argues that L.H. Jones's claim under the Act should be dismissed as a matter of law.

L.H. Jones's Complaint alleges breach of contract, violations of the West Virginia Uniform Commercial Code, tortious interference with a business relationship and violations of the Act against Swenson. The question certified relates solely to whether, in this case, L.H. Jones can bring a cause of action under the Act.

III. STATEMENT OF THE QUESTION TO BE ANSWERED

Pursuant to the Uniform Certification of Questions of Law Act, W. Va. Code § 51-1A-1, *et seq.*, the district court has formulated the Question of Law to be Answered as follows:

Recognizing that Article 6, Section 30, of the West Virginia Constitution provides that "[n]o act hereafter passed, shall embrace more than one object, and that shall be expressed in the title," and that an act shall be void as to any object in it which is not so expressed, and also acknowledging the long-standing precedent of the Supreme Court of Appeals of West Virginia that "[t]he title of an act should be construed most liberally and comprehensively in order to give validity to all parts of the act," Syl. Pt. 2, *Brewer v. City of Point Pleasant*, 114 W. Va. 572 (1934), and that "[w]hen the principal object of an act is fairly expressed in its title, other incidental or auxiliary objects which are germane to the principal object may be included in the act without titular specification," *id.* at Syl. Pt. 3, is the West Virginia Farm Equipment Dealer Contract Act, W. Va. Code § 47-11F-1, *et seq.* ("the Act"), limited in its scope and application to "dealers" and "suppliers" of "farm equipment," as stated in the Act's title, or do the protections of the Act extend to "dealers" and "suppliers" of "farm, construction, industrial or outdoor power equipment or any combination of the foregoing," as provided in the definition of "dealer," found in the Act at § 47-11F-2?

Pursuant to West Virginia Code Section 51-1A-4, this Court may reformulate the question certified to it. See *Kincaid v. Mangum*, 189 W. Va. 404, 432 S.E.2d 74, Syl. Pt. 3 (1993) (holding that Court retains power to reformulate questions).

IV. DISCUSSION

A. Standard Of Review

This Court consistently applies a *de novo* standard of review in addressing the legal issues presented by certified questions from federal district or appellate courts pursuant to West Virginia Code Section 51-1A-1, *et seq.* See, e.g., *Timber Ridge, Inc. v. Hunt Country Asphalt & Paving, LLC*, 222 W. Va. 784, 671 S.E.2d 789, Syl. Pt. 1 (2008); *Aikens v. Debow*, 208 W. Va. 486, 541 S.E.2d 576, Syl. Pt. 2 (2000); *Light v. Allstate Ins. Co.*, 203 W. Va. 27, 506 S.E.2d 64, Syl. Pt. 1 (1998). This Court, however, reviews only issues of law *de novo*, not issues of fact. *Preussag Int'l Steel Corp. v. March-Westin Co.*, 221 W. Va. 472, 655 S.E.2d 494, 498 n.2 (2007). As discussed in footnote 1, *supra*, this Court should proceed upon the facts in the district court's Order of Certification and give no consideration to facts and characterizations that were not presented to nor ruled upon by the district court. See *id.*²

B. The Scope Of The Act Extends To A "Dealer" And "Supplier" Of "Farm, Construction, Industrial Or Outdoor Power Equipment Or Any Combination Of The Foregoing[.]"

As demonstrated below, the scope of the Act with the short title West Virginia Farm Equipment Dealer Contract Act, W. Va. Code § 47-11F-1, *et seq.*, extends to a "dealer" and

²Because this Court should not consider Swenson's "Statement of Relevant Facts" and Exhibits A through D referred to therein, L.H. Jones does not discuss these alleged "facts" herein. L.H. Jones's silence, however, should not be confused with acquiescence. L.H. Jones disputes many of Swenson's alleged "facts," particularly those regarding L.H. Jones's bidding practices. L.H. Jones further notes that public documents, such as the company profile and product description of the Mini-Vee spreader on Swenson's website state that Swenson's first spreader was "used primarily for agricultural applications on [Mr. Swenson's] Cherry Valley, Illinois family farm, see <http://www.swensonspreader.com/company.asp>, and that the Mini-Vee spreader may be used to spread fertilizer. See <http://www.swensonspreader.com/products.asp?prod=MINIVEE>.

“supplier” of “farm, construction, industrial or outdoor power equipment or any combination of the foregoing[.]” First, the plain language of the definition of “dealer” in the Act means any business entity “engaged in the business of selling, at retail, farm, construction, industrial or outdoor power equipment or any combination of the foregoing[.]” W. Va. Code § 47-11F-2(a)(3). Second, the Legislature’s intent as expressed in the title of the Act was to amend West Virginia Code Chapter 47 to add a new Article 11F, *inter alia*, “relating to the contractual relationship between farm, construction, industrial or outdoor power equipment retail dealers and their suppliers generally.” 1989 W. Va. Acts 1304. Third, the application of familiar rules of statutory construction also supports this result.

1. **The plain language of the definition of “dealer” in the Act means any business entity “engaged in the business of selling, at retail, farm, construction, industrial or outdoor power equipment or any combination of the foregoing[.]”**

By its plain language, the definition of “dealer” in the Act means any business entity “engaged in the business of selling, at retail, farm, construction, industrial or outdoor power equipment or any combination of the foregoing[.]” W. Va. Code § 47-11F-2(a)(3). This Court recently has reiterated its holding that “[a] statutory provision which is clear and unambiguous and plainly expresses the legislative intent will not be interpreted by the courts but will be given full force and effect.” *Kasserman & Bowman, PLLC v. Cline*, No. 34140, 2009 WL 804111, Syl. Pt. 5 (Mar. 27, 2009) (quoting *State v. Epperly*, 135 W. Va. 877, 65 S.E.2d 488, Syl. Pt. 2 (1951)). See also *State ex rel. Daye v. McBride*, 222 W. Va. 17, 658 S.E.2d 547, Syl. Pt. 2 (2007) (holding that “[w]here the language of a statute is free from ambiguity, its plain meaning is to be accepted and applied without resort to interpretation”), *cert. denied*, 129 S. Ct. 131, 172 L. Ed. 2d 100 (2008); *State v. Gen. Daniel Morgan Post No. 548, Veterans of Foreign Wars*, 144 W. Va. 137, 107 S.E.2d 353, Syl. Pt. 5 (1959) (holding that “[w]hen a statute is clear and

unambiguous and the legislative intent is plain, the statute should not be interpreted by the courts, and in such case it is the duty of the courts not to construe but to apply the statute”).

Accordingly, the Court has recently recognized:

The plain meaning of a statute is normally controlling, except in the rare case in which literal application of a statute will produce a result demonstrably at odds with the intentions of the drafters. In such case, it is the legislative intent, rather than the strict language, that controls.

Worley v. Beckley Mech., Inc., 220 W. Va. 633, 648 S.E.2d 620, Syl. Pt. 2 (2007).

In this action, the clearest expression of the Legislature’s intent can be found within the statute itself. *Appalachian Power Co. v. State Tax Dep’t*, 195 W. Va. 573, 587, 466 S.E.2d 424, 438 (1995) (citing *Kofa v. United States I.N.S.*, 60 F.3d 1084, 1088 (4th Cir. 1995)). Here, the Legislature specifically defined its scope, and clearly expressed its intent that equipment, other than “farm” equipment be included in its purview. The inclusion of additional equipment types indicates that the Legislature was seeking to protect the interests of construction, industrial or outdoor power equipment dealers in addition to farm equipment dealers. A brief glance at the definitions portion of the Act clearly establishes the Act’s broad coverage of all dealers of such specified equipment.

Several other states have adopted similar acts to protect equipment dealers in their respective states as well. Many of those acts include the term “farm” in the title, but are not limited to dealers and suppliers of farm equipment only. For example, the Colorado Farm Equipment Fair Dealership Act, Colo. Rev. Stat. § 35-38-101, *et seq.*, defines the term “equipment” to include, *inter alia*, “light industrial, utility and outdoor power equipment” in addition to agricultural machines. Colo. Rev. Stat. § 35-38-102(2)(a). Thus, in *Denner Enters., Inc. v. Barone, Inc.*, 87 P.3d 269 (Colo. App. 2004), the court applied that act to a dealer of Spoil-Vac systems, which are used to vacuum slurry from newly dug trenches.

Similarly, Kentucky's Retail Sales of Farm Equipment law also applies to "utility and industrial equipment and construction and excavating equipment." Ky. Rev. Stat. Ann. § 365.800. Accordingly, in *Leon Mfg. Co. v. Wilson Kubota, LLC*, 199 S.W.3d 759 (Ky. App. 2006), the circuit court applied that act to the defendant Leon Manufacturing Company, Inc., which manufactures, *inter alia*, dozer blades. Although the court of appeals reversed the circuit court's judgment due to an invalid franchise agreement, it did not question the application of that act to a dozer blade manufacturer. *See also* Ark. Code Ann. § 4-72-301(3) (Arkansas' Farm Equipment Retailer Franchise Protection Act, including within its scope not just "farm implements" but also "industrial equipment and lawn and garden outdoor powered machinery").

Like these other acts, the Act here is not limited to farm equipment dealers only, but instead applies to all equipment types defined in the Act. By its plain language, the definition of "dealer" is clear and unambiguous. Dealer means any business entity selling "farm, construction, industrial or outdoor power equipment or any combination of the foregoing[.]" Indeed, Swenson does not argue that the definition of "dealer" does not clearly and unambiguously include construction, industrial or outdoor power equipment dealers. Instead, it seems to suggest without any authority that this result is at odds with the intention of the Legislature based on the short title of the Act. As demonstrated below, Swenson's argument is without merit.

2. **The Legislature's intent expressed in the title of the Act was to amend West Virginia Code Chapter 47 to add a new Article 11F, *inter alia*, "relating to the contractual relationship between farm, construction, industrial or outdoor power equipment retail dealers and their suppliers generally."**

The expressed intent of the Legislature in the title of the Act was to amend West Virginia Code Chapter 47 to add a new Article 11F, *inter alia*, "relating to the contractual relationship between farm, construction, industrial or outdoor power equipment retail dealers and their

suppliers generally.” The cardinal rule of statutory construction and interpretation is to give effect to the intention of the Legislature. *Anderson v. State Workers Comp. Comm’r*, 174 W. Va. 406, 408, 327 S.E.2d 385, 387 (1985) (citing *State ex rel. Simpkins v. Harvey*, 172 W. Va. 312, 305 S.E.2d 268, Syl. Pt. 1 (1983)). Accordingly, *City of Huntington v. State Water Comm’n*, 135 W. Va. 568, 64 S.E.2d 225, Syl. Pt. 2 (1951), held that “[i]n construing an ambiguity in a statute, this Court will examine the title to the Act of the Legislature as a means of ascertaining the legislative intent, and the overall purpose of the legislation.” See also *Foster v. Sakhai*, 210 W. Va. 716, 559 S.E.2d 53, 63 (2001) (examining the Acts of the Legislature).

When the Act was passed, the Legislature gave it the following title:

AN ACT to amend chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article eleven-f, *relating to the contractual relationship between farm, construction, industrial or outdoor power equipment retail dealers and their suppliers generally; providing a short title by which the article may be known and cited; providing certain definitions of terms used with respect thereto*; requiring certain notices to be given by one party to such contracts to the other party thereto with respect to the termination of any contractual arrangement between them and the time certain exceptions with respect to such terminations; the manner, form and content of such notifications; requiring the supplier to repurchase dealer inventory at the time of such termination and the terms of such repurchase; providing exceptions with respect to such repurchase requirements; providing for certain rules with respect to the applicability of the uniform commercial code; providing certain rules with respect to outstanding warranty claims at the time of termination; certain civil remedies against the suppliers available to such dealers and the amounts of recovery with respect to actions brought in such cases; providing for the applicability of certain other legal remedies; and providing for a period of limitations with respect to any action brought pursuant to said article.

1989 W.Va. Acts 1304 (emphasis added).

This clear and unambiguous expression of the Legislature’s intent in the title of the Act that it relate to “the contractual relationship between farm, construction, industrial or outdoor power equipment retail dealers and their suppliers generally” comports with the plain meaning of the Act, particularly the definition of “dealer.” In arguing otherwise, Swenson ignores the actual

title of the Act and instead focuses only on the short title of the Act. The intent of the Legislature, however, is found not in the short title, which is used only for a convenient reference. Instead, the Legislature's intent is found in the actual title, which expressly states that the Act applies to farm, construction, industrial or outdoor power equipment retail dealers and their suppliers generally. The actual title of the Act, therefore, is consistent with and supports the plain language of the Act, which defines "dealer" to include any business entity selling "farm, construction, industrial or outdoor power equipment or any combination of the foregoing[.]" The Legislative intent could not be ascertained with more certainty.

3. The application of familiar rules of statutory construction also supports this result.

The plain meaning and title of the Act are also consistent with the result obtained by the application of familiar rules of statutory construction. As the district court observed in the Question of Law to be Answered, this Court has long-standing precedent holding that "[t]he title of an act should be construed most liberally and comprehensively in order to give validity to all parts of the act," *Brewer v. City of Point Pleasant*, 114 W. Va. 572, 172 S.E. 717, Syl. Pt. 2 (1934), and that "[w]hen the principal object of an act is fairly expressed in its title, other incidental or auxiliary objects which are germane to the principal object may be included in the act without titular specification." *Id.* at Syl. Pt. 3. See, e.g., *McCoy v. VanKirk*, 201 W. Va. 718, 500 S.E.2d 534, 546 (1997) (holding that court should construe language and title of act in "most comprehensive sense favorable to its validity"); *State v. Haskins*, 92 W. Va. 632, 115 S.E. 720, 722 (1923) (holding that "the title of an act should be construed most liberally and comprehensively in order to give validity to all parts of the act"). See also *Kasserman & Bowman, PLLC v. Cline*, No. 34140, 2009 WL 804111, Syl. Pt. 8 (Mar. 27, 2009) (holding that in interpretation of statute, effect should be given to every section, clause, word or part).

In this action, while the Legislature did designate its short title as the “Farm Equipment Dealer Contract Act,” to limit the Act’s application to only farm equipment would nullify other portions of the Act, particularly the definition of “dealer” and its complete and actual title. The Legislature designated the short title as a convenient means to refer to the Act, and did not contemplate that in so doing the Act’s application would be limited to dealers of farm equipment only. Therefore this Court should not limit the Act’s application based on its short title, but instead should give full effect to the terms set forth in the “Definitions” section of the Act, found at W.Va. Code § 47-11F-2. The definitions found in that section plainly define the scope of the Act’s application. To limit or modify these terms, and thereby, the scope of the Act, would only serve to subvert the Legislature’s intention that the act apply to dealers and suppliers of “construction,” “industrial,” and “outdoor power equipment” as listed in the definition of “dealer” at W.Va. Code § 47-11F-2(a)(3). Accordingly, this Court should hold that the Act is not limited by the short title’s use of the term “farm,” and should give effect to the Legislature’s full intent as expressed in both the definition of “dealer” and the complete title of the Act to protect dealers of farm, construction, industrial and outdoor power equipment generally.

Contrary to Swenson’s argument on page 8 of its opening brief, the maxim *expressio unius est exclusio alterius* has no application here because the Legislature included the terms “construction, industrial or outdoor power equipment or any combination of the foregoing[.]” This Court has held that “[i]n the interpretation of statutory provisions the familiar maxim *expressio unius est exclusio alterius*, the express mention of one thing implies the exclusion of another, applies.” *Manchin v. Dunfee*, 174 W. Va. 532, 327 S.E.2d 710, Syl. Pt. 3 (1984). See also *State ex rel. Riffle v. Ranson*, 195 W. Va. 121, 464 S.E.2d 763, 770 (1995) (“*Expressio unius est exclusio alterius* (express mention of one thing implies exclusion of all others) is a

well-accepted canon of statutory construction”). The *expressio unius* maxim does not apply since the Legislature expressly mentioned construction, industrial and outdoor power equipment. Moreover, in *Westfield Ins. Co. v. Paugh*, 390 F. Supp. 2d 511, 523 (N.D.W. Va. 2005), the court held that the rule of *expressio unius est exclusio alterius* does not apply as a test of compliance with the single-subject rule embodied in West Virginia Constitution, Article VI, Section 30. See also *Mayo v. Polk Co.*, 124 Fla. 534, 169 So. 41, 43 (1936) (holding that while rule that expression of one thing is exclusion of another is generally sound rule of statutory construction, it has no application to title of act); *Loving County v. Higginbotham*, 115 S.W.2d 1110, 1121 (Tex. Civ. App. 1938) (same). Swenson’s attempt to apply this maxim is misguided at best.

C. The Title Of The Act Does Not Violate The West Virginia Constitution, Article VI, Section 30 Because It Is An Amendatory Act, The Title Of Which States The General Theme Or Purpose Of The Act And The Substance Of Which Is Germane To The Object Expressed In The Title .

The title of the Act does not violate the West Virginia Constitution, Article VI, Section 30.³ Article VI, Section 30, is intended to prevent certain abuses of the legislative process generally termed “log-rolling.” See *Kincaid*, 432 S.E.2d at 79-80 (discussing history and purpose of one-subject rule “to prevent log-rolling in the enactment of laws”). In other words, the purpose in enacting this provision, “[w]as to guard against the enactment of laws by a sort of fraud upon the Legislature by including in an act for one purpose, which was stated in its title, other and different objects, not so stated, and of which nothing was often known save by a few interested in the bill.” *State ex rel. Walton v. Casey*, 179 W. Va. 485, 370 S.E.2d 141, 143 (1988).

³ In *Kincaid v. Mangum*, 189 W. Va. 404, 432 S.E.2d 74 (1993), this Court noted that “[w]hen declaratory relief is sought, . . . if the statute, ordinance or franchise is alleged to be unconstitutional, the attorney general of the State shall also be served with a copy of the proceeding and be entitled to be heard.” *Id.*, 432 S.E.2d at 76 n. 1 (quoting W. Va. Code § 55-13-11). Accordingly, the attorney general will be served with a copy of this brief.

The West Virginia Constitution does not require that every detail of the statutory provision be included in the act's title. Instead the title need only give "reasonable or fair notice, suggestion, or indication" of the subject of the act. *Huntington v. Chesapeake & Potomac Tel. Co.*, 154 W. Va. 634, 177 S.E.2d 591, 597 (1970). "When the principle object of an act is fairly expressed in its title, other incidental or auxiliary objects which are germane to the principle object may be included in the act without titular specification." *Brewer v. Point Pleasant*, 114 W. Va. 572, 172 S.E. 717, Syl. Pt. 3 (1934). "[O]nly where it is 'manifest that the contents of the act are not within the title' should the act be declared invalid." *Gen. Elec. Co. v. A. Dandy Appliance Co.*, 143 W. Va. 491, 103 S.E.2d 310, 317 (1958) (quoting *State v. Mines*, 38 W. Va. 125, 18 S.E. 470 (1893)); *City of Wheeling ex rel. Carter v. Am. Cas. Co.*, 131 W. Va. 584, 48 S.E.2d 404, 410 (1948).

Where an act amends a prior act or West Virginia Code provision, the constitution requires even less. Thus, In *Roby v. Sheppard*, 42 W. Va. 286, 26 S.E. 278 (1896), this Court held as follows:

2. In the case of a statute amendatory of a prior one, where the question is whether the object is sufficiently expressed in the title, it is unnecessary to inquire whether the title of the amendatory statute be in itself sufficiently expressive of such object, if the title of the first act be sufficient to embrace the matters contained in the amendatory act. As to the title of acts amending the Code, see opinion.
3. The matters of an amendatory act, as is the rule as to the title and matters of an original act, in order to come under the title of an original act, must not be foreign to that title. Such matters, though they may be of diverse nature, must be such as can be regarded as only in furtherance and execution of the object expressed in the title, and congruous and germane thereto by reason of having some natural relation to the subject expressed in the title. The constitution is to be liberally construed, so as to sustain the validity of the act, if possible.

Id. at Syl. Pts. 2-3.

In accordance with Syllabus Point 2, the opinion in *Roby* further held as follows as to the title of acts amending the Code:

Where an act amending a certain chapter and section or sections of the Code, or any other act, in its title refers to the chapter and section or sections of the Code or the act amended specifically, that is sufficient, so far as it concerns the requirement that the object shall be expressed in the title. Of course the new matters brought in by the amendment must not be foreign to the subject of the prior legislation, but congruous and germane to such prior legislation, such as might have been put into that legislation under the original title, in the case of a separate act, or in the code chapter when first made[.]

Id., 26 S.E. at 280. See also *West Virginia Legislature Bill Drafting Manual* at pp. 7-8

(containing general drafting rules for bill titles).

As discussed above, when the Act was passed, the Legislature gave it the following title:

AN ACT to amend chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article eleven-f, *relating to the contractual relationship between farm, construction, industrial or outdoor power equipment retail dealers and their suppliers generally; providing a short title by which the article may be known and cited; providing certain definitions of terms used with respect thereto*; requiring certain notices to be given by one party to such contracts to the other party thereto with respect to the termination of any contractual arrangement between them and the time certain exceptions with respect to such terminations; the manner, form and content of such notifications; requiring the supplier to repurchase dealer inventory at the time of such termination and the terms of such repurchase; providing exceptions with respect to such repurchase requirements; providing for certain rules with respect to the applicability of the uniform commercial code; providing certain rules with respect to outstanding warranty claims at the time of termination; certain civil remedies against the suppliers available to such dealers and the amounts of recovery with respect to actions brought in such cases; providing for the applicability of certain other legal remedies; and providing for a period of limitations with respect to any action brought pursuant to said article.

1989 W.Va. Acts 1304 (emphasis added).⁴

This title clearly states that it amends West Virginia Code Chapter 47 by adding thereto a new Article 11F. This is sufficient, so far as it concerns the requirement that the object shall be

⁴ There should be no doubt that the quoted passage is the Act's title. See *West Virginia Legislature Bill Drafting Manual* at p. 2 (identifying parts of a bill).

expressed in the title. Of course the new matters brought in by the amendment are not foreign to the subject of the prior legislation, which is Regulation of Trade, but congruous and germane to such prior legislation.

Swenson's argument that the Act is unconstitutional based on its short title is specious. The Illinois Supreme Court soundly rejected a similar challenge to an act with the short title Retailers' Occupation Tax Act, reasoning as follows:

In contending that the act is unconstitutional, the appellants say that the short title, Retailers' Occupation Tax act, would not express the subject matter of the act if the [appellee's] construction of the act The short name given the act by the legislature in no way supplants the title of the act. It is a matter of convenience and is a thing that has been done before, as in case of the Workmen's Compensation act. *If this contention be made seriously, we hold that it is the title itself, and not a convenient name contained in or created by the body of the act, that must be looked to in determining whether the constitutional requirements as to the title of a statute have been met.*

Franklin County Coal Co. v. Ames, 194 N.E. 268, 271 (Ill. 1934) (emphasis added).

The Supreme Court of Georgia applied the same reasoning more recently in *Lutz v. Foran*, 262 Ga. 819, 427 S.E.2d 248 (1993), which held that despite the short title of Medical Malpractice Reform Act of 1987, the title of an act that requires plaintiffs bringing professional negligence actions to file an expert affidavit with the complaint was not unconstitutional because it gave the General Assembly and public adequate notice that the act contained matters relating to malpractice actions against nonmedical professionals. After noting that the court has construed the word title in the constitution to mean the act's caption, *id.*, 427 S.E.2d at 250 n. 2, the court held:

Applying a reasonable interpretation of the statute, we hold that the title of the act gives the reader sufficient notice that the affidavit requirement will apply in professional malpractice actions. The caption states that the act is "to provide that in any case in which *professional* malpractice is alleged, an affidavit of an expert competent to testify setting forth the particulars of the claim shall be filed with the complaint." Ga.L. 1987, p. 887 (emphasis supplied). The language in section

three of the act tracks the words in the caption. *Id.* at 889. Section three is one of only three substantive provisions of the four-page act and receives its proportionate share of the lines in the caption. Thus, despite the short title of "Medical Malpractice Reform Act of 1987," the caption gives the General Assembly and the public adequate notice that the act contains matter relating to malpractice actions against professionals.

Id., 427 S.E.2d at 251.

Applying these principals to this action, the inclusion of the term "farm" in the short title of the Act does not prevent its application to dealers and suppliers of the other defined equipment types. As a whole, the "title imparts enough information to one interested in the subject matter to provoke a reading of the act." *State ex rel. Lambert v. County Comm'n*, 192 W. Va. 448, 452 S.E.2d 906, Syl. Pt. 7 (1994). However, if there is any doubt as to whether the title of the Act is sufficient to give notice to interested parties, the Court must resolve those doubts in favor of the constitutionality of the statute. *Gen. Elec. Co.*, 103 S.E.2d at 317. The Court should "never impute to the Legislature intent to contravene the constitution of either the state or the United States, by construing a statute so as to make it unconstitutional, if such construction can be avoided, consistently with law, in giving effect to the statute, and this can always be done, if the purpose of the act is not beyond legislative power in whole or in part" *State ex rel. McMillion v. Stahl*, 141 W. Va. 233, 89 S.E.2d 693, 697 (1955). Because the Act meets these constitutional requirements, the "title should be construed in its most comprehensive and liberal sense favorable to the validity of any provision of the act." *State v. Haskins*, 92 W. Va. 632, 115 S.E. 720, 722 (1923).

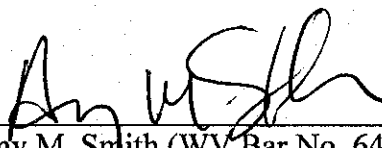
V. CONCLUSION

For all the foregoing reasons, this Court should answer the first part of the Question to be Answered in the negative and the second part in the affirmative, holding that the protections of the West Virginia Farm Equipment Dealer Contract Act, W. Va. Code § 47-11F-1, *et seq.*,

extend to a "dealer" and "supplier" of "farm, construction, industrial or outdoor power equipment or any combination of the foregoing[.]"

Dated this 20th day of May, 2009.

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Counsel for Plaintiff
L.H. Jones Equipment Company

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

L.H. JONES EQUIPMENT COMPANY,

Plaintiff,

v.

// CIVIL ACTION NO. 1:08CV109
(Judge Keeley)

SWENSON SPREADER LLC,

Defendant.

ORDER OF CERTIFICATION TO THE
SUPREME COURT OF APPEALS OF WEST VIRGINIA

Pursuant to W. Va. Code § 51-1A-3, the United States District Court for the Northern District of West Virginia certifies the following question to the Supreme Court of Appeals of West Virginia.

I. THE QUESTION OF LAW TO BE ANSWERED

Recognizing that Article 6, Section 30, of the West Virginia Constitution provides that "[n]o act hereafter passed, shall embrace more than one object, and that shall be expressed in the title," and that an act shall be void as to any object in it which is not so expressed, and also acknowledging the long-standing precedent of the Supreme Court of Appeals of West Virginia that "[t]he title of an act should be construed most liberally and comprehensively in order to give validity to all parts of the act," Syl. Pt. 2, Brewer v. City of Point Pleasant, 114 W. Va. 572 (1934), and that "[w]hen the principal object of an act is fairly

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expressed in its title, other incidental or auxiliary objects which are germane to the principal object may be included in the act without titular specification," id. at Syl. Pt. 3, is the West Virginia Farm Equipment Dealer Contract Act, W. Va. Code § 47-11F-1, et seq. ("the Act"), limited in its scope and application to "dealers" and "suppliers" of "farm equipment," as stated in the Act's title, or do the protections of the Act extend to "dealers" and "suppliers" of "farm, construction, industrial or outdoor power equipment or any combination of the foregoing," as provided in the definition of "dealer," found in the Act at § 47-11F-2?

The Court acknowledges that, pursuant to W. Va. Code § 51-1A-4, the Supreme Court of Appeals of West Virginia may reformulate the question certified to it.

II. STATEMENT OF FACTS

This case is at a very early stage of litigation. No discovery has been undertaken, other than the required initial disclosures, because of the need to resolve the question of law raised in the certified question. Nevertheless, the following facts and allegations have been gleaned from the parties' pleadings and early briefing on this issue.

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Defendant Swenson Spreader LLC ("Swenson") designs and manufactures spreaders, liquid spray de-icing systems and other equipment and products. Plaintiff L.H. Jones Equipment Company ("L.H. Jones"), a retailer, sells snow plows, snow plow attachments, spreaders and related parts and equipment. From at least as early as 1982, until September 10, 2007, L.H. Jones was an authorized distributor of Swenson's products in West Virginia.

In its Complaint, L.H. Jones alleges, among other things, that since at least 1982, as an authorized dealer of Swenson equipment it had been awarded contracts with the State of West Virginia to supply it with Swenson brand ice removal equipment and replacement parts. L.H. Jones alleges that in 2005 and 2007, following a competitive bidding process, West Virginia awarded L.H. Jones two open purchase orders to supply it with two types of Swenson spreaders capable of spreading salt or other anti-skid material, which the State would use in highway and road maintenance.

L.H. Jones alleges that after being awarded these open purchase orders, on September 10, 2007, Swenson terminated it as an authorized distributor of Swenson products. As a result, L.H. Jones allegedly was unable to fulfil its orders from the State of West Virginia.

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Swenson does not dispute that it sold spreaders and other ice removal equipment and parts to L.H. Jones, or that it terminated its relationship with L.H. Jones on September 10, 2007. It does, however, dispute that the spreaders in question in this lawsuit are the type of equipment covered by the West Virginia Farm Equipment Dealer Contract Act, and thus argues that L.H. Jones's claim under this Act should be dismissed as a matter of law.

L.H. Jones's Complaint alleges breach of contract, violations of the West Virginia Uniform Commercial Code, tortious interference with a business relationship and violations of the West Virginia Farm Equipment Dealer Contract Act against Swenson. The question certified relates solely to whether, in this case, L.H. Jones can bring a cause of action under the West Virginia Farm Equipment Dealer Contract Act.

III. THE PARTIES AND THEIR COUNSEL

A. The plaintiff is:

L.H. Jones Equipment Company, a West Virginia corporation.

Counsel for the plaintiff are:

Christi R. Stover
Steptoe & Johnson, PLLC
PO Box 1616
Morgantown, WV 26507-1616, and

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Helen L. Gemmill and Kimberly M. Colonna (both admitted pro hac vice)
McNees, Wallace & Nurick, LLC
PO Box 1166
Harrisburg, PA 17108

B. The defendant is:

Swenson Spreader LLC, an Ohio Limited Liability Company with its principal place of business in Illinois.

Counsel for the defendant are:

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Schrader, Byrd & Companion, PLLC
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Elizabeth Shively Boatwright, Richard S. Gurbst (both admitted pro hac vice) and Wm. Michael Hanna
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127 Public Sq.
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Cleveland, OH 44114-1304

IV. ORDER

Pursuant to W. Va. Code § 51-1A-1, et seq., it is ORDERED:

- A. That the question stated in Part I above is certified to the Supreme Court of Appeals of West Virginia;
- B. That the Clerk of this Court forward to the Supreme Court of Appeals of West Virginia, under the official seal of this Court, a copy of this Certification Order together with the original or copies of the record before this Court to the extent requested by the Supreme Court of Appeals of West Virginia;

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- C. That any request for all or part of the record be fulfilled by the Clerk of this Court simply upon notification from the Clerk fo the Supreme Court of Appeals of West Virginia; and
- D. That the Clerk of this Court forward a copy of this Certification Order to counsel of record.

DATED: February 6, 2009.

/s/ Irene M. Keeley

IRENE M. KEELEY

UNITED STATES DISTRICT JUDGE

ACTS
OF THE
LEGISLATURE
OF
WEST VIRGINIA



Regular Session, 1989
Extraordinary Session, 1989

CHAPTER 176**(S. B. 182—By Senator Hawse)**

[Passed March 15, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article eleven-f, relating to the contractual relationship between farm, construction, industrial or outdoor power equipment retail dealers and their suppliers generally; providing a short title by which the article may be known and cited; providing certain definitions of terms used with respect thereto; requiring certain notices to be given by one party to such contracts to the other party thereto with respect to the termination of any contractual arrangement between them and the time requirements with respect to such notice; providing for certain exceptions with respect to such terminations; the manner, form and content of such notifications; requiring the supplier to repurchase dealer inventory at the time of such termination and the terms of such repurchase; providing exceptions with respect to such repurchase requirements; providing for certain rules with respect to the applicability of the uniform commercial code; providing certain rules with respect to outstanding warranty claims at the time of termination; certain civil remedies against the suppliers available to such dealers and the amounts of recovery with respect to actions brought in such cases; providing for the applicability of certain other legal remedies; and providing for a period of limitations with respect to any actions brought pursuant to said article.

Be it enacted by the Legislature of West Virginia:

That chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article eleven-f, to read as follows:

ARTICLE 11F. FARM EQUIPMENT DEALER CONTRACT ACT.

- §47-11F-1. Short title.
- §47-11F-2. Definitions.
- §47-11F-3. Notice of termination of agreement or contract.
- §47-11F-4. Supplier requirement to repurchase dealer inventory; terms of repurchase.
- §47-11F-5. Exceptions to repurchase requirement.
- §47-11F-6. Applicability of uniform commercial practices.
- §47-11F-7. Warranty claims.
- §47-11F-8. Civil remedies applicable.

§47-11F-1. Short title.

- 1 This article shall be known and may be cited as the
- 2 "West Virginia Farm Equipment Dealer Contract Act."

§47-11F-2. Definitions.

- 1 (a) As used in this article, unless the context in which
- 2 used clearly requires otherwise:
 - 3 (1) "Agreement" or "contract" means a written or oral
 - 4 agreement or contract between a dealer and a supplier,
 - 5 by the terms of which the dealer is granted the right
 - 6 to sell the supplier's equipment and the dealer is
 - 7 required to order and maintain inventory from such
 - 8 supplier in excess of ten thousand dollars at current net
 - 9 price.
 - 10 (2) "Current net price" means the price listed in the
 - 11 supplier's price list in effect at the time an agreement
 - 12 is terminated, less any applicable discount allowed.
 - 13 (3) "Dealer" means any person, firm, partnership,
 - 14 association, corporation or other business entity engaged
 - 15 in the business of selling, at retail, farm, construction,
 - 16 industrial or outdoor power equipment or any combina-
 - 17 tion of the foregoing and who maintains a total inven-
 - 18 tory of new equipment and repair parts having an
 - 19 aggregate value of not less than twenty-five thousand
 - 20 dollars at current net price and who provides repair
 - 21 service for such equipment.
 - 22 (4) "Inventory" means the tractors, implements,
 - 23 attachments, equipment, and repair parts that the
 - 24 dealer purchased from the supplier, including, but not
 - 25 limited to, any data processing hardware and software,
 - 26 special service tools, and business signs the supplier has
 - 27 required the dealer to purchase and maintain.

28 (5) "Net cost" means the price paid by the dealer to
29 the supplier for the inventory, less all applicable
30 discounts allowed, plus the amount the dealer paid for
31 freight costs from the supplier's location to the dealer's
32 location and the reasonable cost of assembly incurred or
33 performed by the dealer.

34 (6) "Supplier" means a wholesaler, manufacturer or
35 distributor who enters into an agreement with a dealer
36 and who supplies inventory to such dealer.

37 (7) "Termination" means the termination, cancella-
38 tion, nonrenewal or discontinuation of an agreement.

39 (b) The terms "farm," "construction," "industrial" or
40 "outdoor power," when used to refer to tractors,
41 implements, attachments or repair parts shall have the
42 meaning commonly used and understood among dealers
43 and suppliers subject to this article.

§47-11F-3. Notice of termination of agreement or contract.

1 (a) The provisions of any agreement to the contrary
2 notwithstanding, a supplier who terminates a contract
3 or agreement with a dealer shall notify such dealer of
4 the termination not less than six months prior to the
5 effective date thereof: *Provided*, That the supplier may
6 terminate the agreement at anytime after the occur-
7 rence of any of the following described events:

8 (1) The filing of a petition for bankruptcy or for
9 receivership filed either by or against the dealer;

10 (2) The dealer defaults under a chattel mortgage or
11 other security agreement between the dealer and the
12 supplier;

13 (3) The dealer has made an intentional misrepresen-
14 tation with the intent to defraud the supplier;

15 (4) The close out or sale or discontinuance of all or at
16 least fifty percent of the dealer's business related to the
17 handling of goods or products of the supplier;

18 (5) If the dealer is a partnership or corporation, the

19 commencement of dissolution or liquidation, whether
20 voluntary or involuntary of such dealer;

21 (6) A change in location of the dealer's principal place
22 of business as provided in the agreement without the
23 prior written approval of the supplier;

24 (7) The withdrawal of an individual proprietor,
25 partner, major shareholder, or the involuntary termina-
26 tion of the manager of the dealership or a substantial
27 reduction in the interest of a partner or major share-
28 holder without the prior written approval of the
29 supplier. If the dealership is operated from more than
30 one location, the involuntary termination of a manager
31 at one or more branch locations without the prior
32 written approval of the supplier shall not be grounds for
33 termination of the dealership by the supplier;

34 (8) The revocation or discontinuance by a guarantor
35 or of any guarantee of the dealer's present or future
36 obligations to the supplier.

37 (b) The provisions of any agreement to the contrary
38 notwithstanding, a dealer who terminates an agreement
39 or contract with a supplier shall notify such supplier of
40 the termination not less than six months prior to the
41 effective date thereof.

42 (c) Any agreement or contract may also be terminated
43 by the written mutual consent of the parties; and the
44 effective date of such termination may be such as is
45 mutually agreed upon by the parties.

46 (d) Notification under this section shall be in writing
47 and shall be given by certified mail, return receipt
48 requested, or by personal delivery to the recipient and
49 the receipt thereof acknowledged in writing by such
50 recipient. Any such notice of termination shall contain
51 (i) a statement of intention to terminate the agreement;
52 (ii) a statement of the reasons for such termination; and
53 (iii) the date on which the termination is to take effect.

**§47-11F-4. Supplier requirement to repurchase dealer
inventory; terms of repurchase.**

1 (a) The provisions of any agreement to the contrary
2 notwithstanding, whenever an agreement or contract
3 between a dealer and a supplier is terminated by either
4 party, the supplier shall repurchase the dealer's
5 inventory as provided in this article unless the dealer
6 chooses to keep the inventory and so advises the supplier
7 in writing.

8 (b) The supplier's obligation to repurchase the
9 dealer's inventory shall apply to any successor in
10 interest or assignee of that supplier. A successor in
11 interest includes any purchaser of assets or stock, any
12 surviving corporation resulting from a merger or
13 liquidation, any receiver, or any trustee of the original
14 supplier.

15 (c) If the dealer dies or becomes incompetent, the
16 supplier shall, at the option of the heir, repurchase the
17 inventory to the same extent as if the agreement had
18 been terminated. The heir has one year from the date
19 of the death of the dealer or from the date such dealer
20 is determined to be incompetent to exercise the options
21 of the dealer under this article.

22 (d) The supplier shall repurchase from the dealer
23 within ninety days from the date of termination of the
24 agreement or contract all inventory previously pur-
25 chased from the supplier that remains unsold on the
26 date of termination of the agreement or contract,
27 including, but not limited to, all data processing
28 hardware and software, special services tools, and
29 business signs that the supplier required the dealer to
30 purchase.

31 (e) The supplier shall pay the dealer:

32 (1) One hundred percent of the net cost of all new,
33 unused, undamaged and complete inventory, except
34 repair parts, special service tools, business signs and
35 data processing equipment, less a reasonable allowance
36 for deterioration attributable to weather conditions at
37 the dealer's location; and

38 (2) Ninety percent of the current net price of all new,

39 unused, and undamaged repair parts that are currently
40 listed in the supplier's price book as of the effective date
41 of such termination; and

42 (3) Seventy-five percent of the net cost of all undam-
43 aged special service tools and business signs in the
44 possession of the dealer which are currently available;
45 and

46 (4) Net cost less twenty percent per year depreciation
47 of all data processing hardware and software that the
48 supplier required the dealer to purchase or the supplier
49 shall assume all data processing hardware and software
50 lease responsibilities of the dealer if the supplier
51 required the dealer to lease the data processing
52 hardware and software from a specific supplier of such
53 hardware and/or software.

54 (f) The inventory shall be returned F.O.B. (which
55 means "free on board") to the dealership and the dealer
56 shall bear the expenses and risk of putting them into
57 the possession of the carrier. The supplier may perform
58 the handling, packing, and loading of repair parts
59 returned and withhold, as a charge for these services,
60 five percent of the current net price of the returned
61 repair parts. The dealer and the supplier may each
62 furnish a representative to inspect all inventory and
63 certify as to its acceptability before being returned.

64 (g) The supplier shall pay the full repurchase amount
65 as required by subsection (d) of this section not later
66 than ninety days after receipt of the inventory by the
67 supplier.

§47-11F-5. Exceptions to repurchase requirement.

1 Any other provisions of this article to the contrary
2 notwithstanding, a supplier shall not be required to
3 repurchase from the dealer (i) a repair part of or with
4 a limited storage life or which is otherwise subject to
5 deterioration; that is to say by way of example and not
6 in limitation thereof, such items as gaskets or batteries;
7 (ii) multiple packaged repair parts when the package
8 has been broken; (iii) a repair part that because of its

9 condition is not resalable as a new part without
10 repackaging or reconditioning; (iv) any portion of the
11 inventory that the dealer chooses to retain; or (v) any
12 inventory that was acquired by the dealer from a source
13 other than the supplier, except for data processing
14 hardware and software, special service tools, and
15 business signs that the supplier required the dealer to
16 purchase; and (vi) any tractor, implement, attachment
17 or equipment that the dealer purchased from the
18 supplier more than thirty-six months before the date of
19 the termination notice.

§47-11F-6. Applicability of uniform commercial practices.

1 (a) The provisions of this article do not affect a
2 security interest of the supplier in the inventory of the
3 dealer.

4 (b) A repurchase of inventory pursuant to this article
5 shall not be subject to the bulk transfer provisions of
6 article six, chapter forty-six of this code.

§47-11F-7. Warranty claims.

1 If after the termination of a contract or agreement,
2 the dealer submits a warranty claim to the supplier for
3 work performed prior to the effective date of the
4 termination of such contract or agreement, the supplier
5 shall accept or reject such claim within a minimum of
6 forty-five days from the day the supplier received the
7 warranty claim. A warranty claim not rejected before
8 the expiration of such forty-five-day period shall be
9 deemed to be accepted by the supplier. In the event a
10 warranty claim is accepted by the supplier as pres-
11 cribed in this section, such claim shall be paid by such
12 supplier not later than sixty days from the date the
13 supplier received the claim.

§47-11F-8. Civil remedies applicable.

1 (a) The provisions of any agreement to the contrary
2 notwithstanding, if a supplier fails or refuses without
3 just cause to repurchase any inventory or portion thereof
4 when required to do so under the provisions of this

5 article within the time periods prescribed thereby, such
6 supplier shall be civilly liable for (i) one hundred
7 percent of the current net price of the inventory or
8 portion thereof not repurchased; (ii) the amount the
9 dealer paid for freight costs from the supplier's location
10 to the dealer's location; (iii) the reasonable cost of
11 assembly performed by the dealer; (iv) reasonable
12 attorney's fees and court costs incurred by the dealer in
13 requiring the supplier to comply with this article of the
14 code; and (v) interest on the current net price of the
15 inventory or portion thereof not repurchased, computed
16 at the prime rate of interest commencing the ninety-first
17 day after termination of the contract agreement, and
18 recomputed quarterly thereafter.

19 (b) Any person who suffers monetary loss due to a
20 violation of this article or because he or she refuses to
21 accede to a proposal for an arrangement that, if
22 consummated, is in violation of this article, may bring
23 civil action to enjoin further violation and to recover
24 damages sustained by him or her together with the costs
25 of the suit, including reasonable attorney's fees and
26 court costs.

27 (c) In the event of failure to provide the required
28 notice of termination or otherwise comply with provi-
29 sions of this article, the supplier shall be civilly liable
30 for the dealer's loss of business for the time period the
31 supplier is in violation of the notice of termination
32 provisions of the article, plus reasonable attorney's fees
33 and court costs.

34 (d) The provisions of this section are in addition to all
35 legal or equitable remedies available at law, as well as
36 any remedies available pursuant to any agreement
37 between the supplier and dealer.

38 (e) A civil action commenced under the provisions of
39 this article may be brought until the expiration of five
40 years after the violation complained of is or reasonably
41 should have been discovered, whichever occurs first.

West Virginia Legislature

Bill Drafting Manual

Prepared by:

House Clerk's Office

Legislative Services

Senate Clerk's Office

Revised

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Exhibit 3

PARTS OF A BILL

HOUSE BILL 900

(By Delegate Doe)

(Heading) (Introduced January 9, 1996; referred to the
Committee on the Judiciary.)

(Title) A BILL to amend the Code of West Virginia, 1931, as amended,
by adding thereto a new chapter, designated §24B-1-1,
§24B-1-2, §24B-1-3, §24B-1-4 and §24B-1-5; §24B-2-1,
§24B-2-2, §24B-2-3 and §24B-2-4; and §24B-3-1,
§24B-3-2 and §24B-3-3, all relating to. . .

(Enacting Clause) *Be it enacted by the Legislature of West Virginia:*

(Enacting Section) That the Code of West Virginia, 1931, as amended,
be amended by adding thereto a new chapter, designated §24B-1-1,
§24B-1-2, §24B-1-3, §24B-1-4 and §24B-1-5; §24B-2-1, §24B-2-2,
§24B-2-3 and §24B-2-4; and §24B-3-1, §24B-3-2 and §24B-3-3, all to
read as follows:

(Chapter) CHAPTER 24B. GAS PIPELINE SAFETY.

(Article) ARTICLE 1. PURPOSE AND DEFINITIONS.

(Section) §24B-1-1. Purpose.

(Body of Bill) It is hereby declared to be the purpose. . .

(Explanatory Note) NOTE: The purpose of this bill is to authorize
the

Strike-throughs indicate language that would be
. . . .

GENERAL DRAFTING RULES

Before the drafter proceeds to the suggested drafting guidelines, the following rules are suggested for study. Insofar as possible, perhaps, a general knowledge of the substance should be committed to memory:

I. BILL TITLES.

In view of Section 30, Article VI of the West Virginia Constitution and various decisions of the West Virginia Supreme Court of Appeals concerning the constitutional provision, the title of a legislative bill is of critical importance. Particular care should be taken in the drafting of a title. Consider the following:

1. If a bill is to amend and reenact a statutory provision and the titles of former acts relating to the same statutory provision are sufficient, then only the new matter or change proposed by the bill need be reflected in the title. In that situation, a court, in determining whether the bill is insufficient, may look not only to the title of the bill but also to the titles of former acts which enacted or reenacted the statutory provision and if, when all of the titles are read together, the object is sufficiently stated, the court will uphold the title. This rule is not applicable when a bill repeals and enacts anew where only the title of the bill may be considered. *Because it takes less time to prepare a title to cover the bill without regard to former titles than it does to locate and analyze the adequacy of former titles, each title should be prepared so that it can stand alone.*

2. A title should not be an index to or an abstract of the content of the bill. Consequently, generality of wording is not objectionable if the statement of the subject of the legislation is not so general as to be meaningless or deceptive.

3. Notwithstanding the general principles recognized in paragraph 2, the nature, scope and consequences of a bill should be included in the title.

4. Consistent with the general principles outlined in paragraph 2, it should be remembered that a title may limit the scope of the bill, but it cannot broaden or extend the effect of the bill as expressed in the body of the bill.

5. There should be some reference in the title to provisions which have far-reaching implications. For example, it is essential that the title contain references to criminal offenses and penalties, and it should contain references to the suspension or revocation of a license or other right, privilege, etc., the exercise of the right of eminent domain, the right of immediate entry, the removal of one from office, the imposition of civil penalties, etc.

6. A title should be written with regard to the above principles and not by simply copying into the title the wording of the section caption or captions contained in the body of the bill, because a section caption is not a part of the statute and is often misleading or quite incomplete when analyzed in light of the principles governing the adequacy of a title.

7. It is essential that a title be in proper grammatical form. The lead words are "relating to" Care should also be given to whether the various phrases are to be separated by semicolons because only when the right punctuation is used can the bill title be read with clarity of meaning.

II. ENACTING CLAUSE.

The enacting clause is provided in Section 1, Article VI of the West Virginia Constitution and is:

Be it enacted by the Legislature of West Virginia:

III. ENACTING SECTION.

The enacting section of bills follows the provisions of the title and necessarily varies from bill to bill. (Part III, p. 61).

IV. CHAPTER HEADINGS.

Chapter headings are not included in bills except where: (1) More than one chapter is amended; (2) adding a new chapter; or (3) the chapter heading is changed..

V. ARTICLE HEADINGS.

Article headings are set forth in all bills.

VI. SECTION NUMBERING AND HEADINGS.

Section numbers and headings are set forth in all bills. In bills amending the code, numbers of sections will follow the numbering form set forth in the code. Example: §1-2-3 designates Chapter 1, Article 2, Section 3. If a new section is to be added, the new number normally will follow

CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of May, 2009, I caused to be served a copy of the foregoing L.H. Jones Equipment Company's Response Brief on Certified Question upon all counsel of record, by depositing true copies thereof in the United States mail, postage prepaid, in envelopes address as follows:

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I further certify that on this same day, I caused to be served a copy of the foregoing L.H. Jones Equipment Company's Response Brief on Certified Question upon the attorney general of this state, by depositing a true copy thereof in the United States mail, postage prepaid, in an envelope addressed as follows:

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